

MARK L. SHURTLEFF
Utah Attorney General
PO Box 142320
Salt Lake City, Utah 84114-2320
Phone: 801-538-9600/ Fax: 801-538-1121
email: mshurtleff@utah.gov
Attorney for Proposed Amici Curiae States

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PATRICK T. FOX
Doubek & Pyfer, PLLP
PO Box 236
Helena, MT 59624
Phone: 406-442-7830 Fax: 406-442-7839
patrickfox@doubekpyfer.com
Local Counsel for Proposed Amici Curiae States

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA, MISSOULA DIVISION

MONTANA SHOOTING SPORTS)	
ASSOCIATION, INC., et al.,)	
)	
Plaintiffs,)	No. 09-CV-147-M-DWM-JCL
v.)	
)	
ERIC H. HOLDER, JR., Attorney)	UNOPPOSED MOTION FOR
General of the United States,)	LEAVE TO FILE BRIEF <i>AMICI</i>
)	<i>CURIAE</i> SUPPORTING
Defendant.)	PLAINTIFFS

The State of Utah and other States, through Utah Attorney General Mark L. Shurtleff, file this unopposed motion for leave to participate as *amici curiae* in support of Plaintiffs in this matter.

Counsel for the amici States has discussed this motion with counsel for Plaintiffs, who have consented to their participation as *amici curiae*. Counsel for Defendant Holder was also contacted, and he stated he had no opposition to this motion. Because neither party objects to the States' participation and because the States believe they can provide the Court with valuable assistance in resolving the issues before it, they ask this Court to grant this motion and allow them to appear as *amici curiae*.

INTEREST OF PROPOSED AMICI

The *amici* States have a vital interest in the recognition and preservation of the rights reserved to them and to their citizens under the United States Constitution, including those under the Ninth and Tenth Amendments. They also have a substantial, ongoing interest in cases that call into the question the constitutionality of their statutes that regulate activities within their own borders.

In addition, Utah and other *amici* States have a particular interest in the issues presented in Plaintiffs' Complaint. Utah and other States besides Montana (i.e., Tennessee, South Dakota, and Wyoming) have recently enacted statutes similar to the Montana Firearms Freedom Act that deem certain firearms manufactured and kept within their own borders as exempt from federal

regulation.¹ Many other States have similar bills under consideration by their respective legislatures. These laws are intended to allow their respective citizens to engage within their States in constitutionally protected activity without burdensome federal oversight and regulation of their solely intrastate activities.

This Court is the first to be faced with the question of whether such new state laws are preempted under the Supremacy Clause by federal statutes and implementing regulations that impose taxation, registration, licensing, marking, and recordkeeping requirements on firearms and ammunition manufacturers, dealers, and importers. The States believe it is important that their voices be heard as the Court considers this important constitutional question. If allowed to participate as amici, the States intend to provide the Court with their unique perspective on the interplay between the power granted to the federal government under the Commerce Clause and the rights reserved to the States or to their people under the Ninth and Tenth Amendments to the United States Constitution.

ARGUMENT

The extent, if any, to which an *amicus curiae* should be permitted to

¹2010 Utah Senate Bill 11(codified at Utah Code Ann. §§ 53-5b-101 to -202, effective February 26, 2010); 2009 Tennessee House Bill 1796, 2009 Public Acts Ch. 435; 2010 Wyoming House Bill 0095 (codified at Wyoming Stat. §§ 6-8-402 to -406); 2010 South Dakota Senate Bill 89 (signed March 12, 2010).

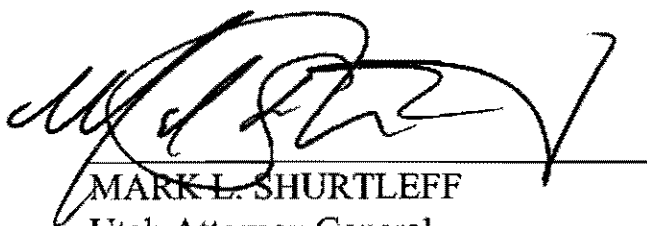
participate in a pending action rests solely within the broad discretion of the federal district court. *Waste Mgt. of Pa., Inc. v. City of York*, 162 F.R.D. 34 (M.D. Pa. 1995); see *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982) (concluding trial court did not abuse its discretion in appointing *amicus curiae*). Relevant factors include the timeliness of the request, whether amicus participation will assist the Court, and whether it will prejudice any party. See *United States v. Ahmed*, 788 F.Supp. 196, 198 (S.D. N.Y. 1992); *Alexander v. Hall*, 64 F.R.D. 152, 155 (D. So. Carolina 1974);

Because the parties to this action have already agreed to allow the States to participate as amici curiae, they must believe they will incur no prejudice if the Court permits the States to do so. The States intend to file their brief as *amici curiae* within the time period for the filing of Plaintiffs' response to Defendant's Motion to Dismiss; thus, their participation will not cause any delay to the Court or to the parties. And, as noted above, the States will provide the Court with useful arguments that reflect their views on the rights they retain under the United States Constitution to regulate purely intrastate activities, including the manufacture of small firearms and ammunition, although the Commerce Clause grants Congress power to regulate commerce "among the several states." U.S. Const. art. I, § 8(3).

CONCLUSION

For the foregoing reasons, the States ask this Court to exercise its discretion to permit them to appear as *amici curiae* in this case. A proposed order to this effect and granting *pro hac vice* status to Utah Attorney General Mark L. Shurtleff as the *amici* States' counsel is being submitted contemporaneously with this motion.

Respectfully submitted this 27th day of March, 2010.



MARK L. SHURTLEFF

Utah Attorney General

PO Box 142320

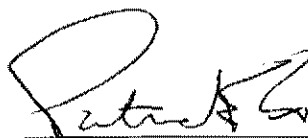
Salt Lake City, Utah 84114-2320

Phone: 801-538-9600

Fax: 801-538-1121

email: mshurtleff@utah.gov

Attorney for Proposed Amici



PATRICK T. FOX

Doubek & Pyfer, PLLP

PO Box 236

Helena, MT 59624

Phone: 406-442-7830

Fax: 406-442-7839

patrickfox@doubekpyfer.com

Local Counsel for Proposed Amici

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon the following individuals by U.S. mail, with sufficient first-class postage prepaid, to the mailing addresses indicated below, and via email to the electronic mailing addresses indicated below, if any, this 24 day of March, 2010.

Quentin M. Rhoades
Sullivan, Tabaracci & Rhoades
1821 South Ave. West, 3rd Floor
Missoula, MT 59801
qmr@montanalawyer.com

Nicholas C. Dranias
Goldwater Institute
500 East Coronado Road
Phoenix, AZ 85004
ndranias@goldwaterinstitute.org

Alexander K. Haas
U.S. Department of Justice
PO Box 883
Washington, D.C. 20530
alexander.haas@usdoj.gov

Timothy C. Fox
Gough, Shanahan, Johnson &
Waterman
PO Box 1715
Helena, MT 59624-1715
tcf@gsjw.com



Patrick T. Fox
Doubek & Pyfer, PLLP
PO Box 236
Helena, MT 59624
Phone: 406-442-7830
Fax: 406-442-7839
patrickfox@doubekpyfer.com